

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MEMORANDUM AND ORDER

This matter is before the Court on the motion of DeAngelo Bishop to hold this case in abeyance pending authorization from the Eighth Circuit to file a successive motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. See 28 U.S.C. § 2255(h)(2); 28 U.S.C. § 2244(b)(3). The Eighth Circuit has not yet ruled on Bishop's request for authorization, having stayed the matter pending the decision in *Beckles v. United States*, 137 S. Ct. 886 (2017). *DeAngelo Bishop v. United States*, No. 16-2302 (8th Cir. Apr. 11, 2017).

In support of his motion to stay, Bishop primarily relies on *Rhines v. Weber*, 544 U.S. 269 (2005). In *Rhines*, the Supreme Court held that a district court could hold a federal habeas petition in abeyance while the petitioner pursued his unexhausted claims in state court. *Rhines*, 544 U.S. at 277-78. Bishop also cites *Ken Warren v. United States*, No. 4:16-CV-893 (ERW) (E.D. Mo. July 19, 2016), *Jerome Williams v. United States*, No. 4:13-CV-544 (JCH) (E.D. Mo. July 15, 2013), and *Leobardo Barraza v. United*

States, No. 4:13-CV-1194 (SNLJ) (E.D. Mo. June 27, 2013). In *Warren*, the court ultimately vacated the order holding the case in abeyance, pending a decision from the Eighth Circuit. Bishop is correct that similar requests for abeyance were granted in *Williams* and *Barraza*.

The 28 U.S.C. § 2255(h) authorization requirement is jurisdictional. Accordingly, this Court does not have jurisdiction over Bishop's successive motion to vacate until the Eighth Circuit grants authorization. *Burton v. Stewart*, 549 U.S. 147 (2007); see, e.g., *Woods v. United States*, 805 F.3d 1152 (8th Cir. 2015). When a second or successive motion to vacate is filed without authorization, the district court has two options: it can dismiss the motion or, in its discretion, transfer the motion to the court of appeals. *Boyd v. United States*, 304 F.3d 813, 814 (8th Cir. 2002). Consequently, the Court cannot hold the case in abeyance. See *James v. United States*, No. 4:16-CV-980 (JCH), 2016 WL 3667976 (E.D. Mo. July 11, 2016); *Wilson v. United States*, No. 4:16-CV-894 (AGF), 2016 WL 3402620 (E.D. Mo. June 21, 2016); *Parks v. United States*, No. 4:14-CV-01122, 2014 WL 3529687 (E.D. Mo. July 16, 2014).

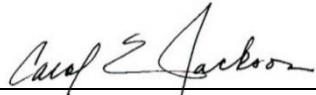
Because Bishop has already filed a request with the Eighth Circuit, this Court will dismiss this case without prejudice as opposed to transferring it. Bishop may refile his § 2255 motion when he obtains authorization to do so.

Accordingly,

IT IS HEREBY ORDERED that the motion to stay and hold this action in abeyance [Doc. # 1] is **denied**.

IT IS FURTHER ORDERED that the motion of DeAngelo Bishop to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 [Doc. #2] is **dismissed without prejudice.**

Dated this 13th day of July, 2017.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE